

Supreme Court of the United States

October Term 1949

No. 554

NATIONAL COUNCIL OF AMERICAN-SOVIET FRIENDSHIP ET AL.
Petitioners,

v.

J. HOWARD McGRATH ET AL.

Suggestion in Connection With Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

On January 23, 1950, the petitioners filed in this Court a petition for a writ of certiorari in the above-captioned case. Subsequently on March 13, 1950, while this petition was pending, the government having duly filed its opposition thereto, the Court granted the petition for writ of certiorari in No. 556, *Joint Anti-Fascist Refugee Committee v. McGrath et al.*

Since that date no action has been taken on the petition filed herein by the petitioners. It is believed that the failure of the Court to act on the petition in the instant case arises from its assumption that the issues in No. 556 and in the present case are identical so that a hearing on No. 556 will suffice to resolve the issues presented.

The petitioners, however, respectfully suggest that the ends of justice and the efficient disposition of the work of this Court require that the petition in the instant case be granted notwithstanding the granting of the petition in No. 556. This suggestion is based upon the following reasons.

In granting the petition in the *Joint Anti-Fascist* case, the Court, of necessity, concluded that the question of the legality of the action of the Attorney General in listing organizations on the so-called subversive list pursuant to Executive Order No. 9835 is an important issue requiring consideration and decision by this Court. It would accordingly be appropriate for the Court to have before it at the time of consideration of this issue different facets of the problem.

The petition filed in the instant case, although involving the same general issue as that presented in the *Joint Anti-Fascist* case, presents important variations of the problem.

These variations are as follows:

(1) The sole complainant in the *Joint Anti-Fascist* case is the Joint Anti-Fascist Refugee Committee. None of the members of the Committee are joined as plaintiffs. In the instant case, the complaint joins as plaintiffs not only the National Council of American-Soviet Friendship, Inc. and the Denver Council of American-Soviet Friendship, but also the individual officers and leaders in these organizations. The complaint alleged that these individuals had been injured by the actions of the respondents in the exercise of their rights under the First Amendment, in the performance of their occupations as lecturers, as ministers and as an architect, and in their opportunities for public and private employment. The Court of Appeals for the District of Columbia considered the absence of members of the *Joint Anti-Fascist Committee* as complainants in that case as a significant obstacle to the granting of relief. The court there said, at 177 F. (2d) 79, 83:

If the Committee means to assert claims in behalf of its members reputedly disgraced by reason of the designation, it is enough to point out that only the members themselves are entitled to complain of any personal injuries they may suffer. Likewise, only the members, not the Committee, can seek redress for alleged impairment of members' constitutional rights of freedom of speech and assembly. Those rights are personal to the individual members. . . . The Committee's declared purposes are altogether charitable, which would give it no authority to assert or protect constitutional liberties and privileges of its individual members.

(2). The complaint in the instant case, unlike that in the *Joint Anti-Fascist* case, alleges that the National Council never engaged in any conduct or activity which provided any basis for it to be designated by the Attorney-General under Executive Order No. 9835 (R. 10). The absence of such an allegation in the *Joint Anti-Fascist* complaint was considered significant by both the Court of Appeals (177 F (2d) at p. 81), and by the government in its opposition (p. 44) to the *Joint Anti-Fascist* petition for certiorari.

(3) The National Council, unlike the *Joint Anti-Fascist* Committee, expressly requested of the Attorney General and was expressly denied a bill of particulars and a hearing.

(4) The National Council is an organization devoted exclusively to the dissemination of information and ideas by press, speech and public meetings. Thus, it is engaged directly and exclusively in the exercise of rights guaranteed by the First Amendment, and the complaint, the allegations of which must be taken as true, alleged a direct and immediate interference with these rights by the respondents' actions. The finding by the Court of Appeals that the *Joint Anti-Fascist* Committee is a charitable organization not directly engaged in the exercise of free

speech and press was considered significant by that court (177 F (2d) at 83).

It may be true that no one of these considerations is necessarily controlling in the determination of the basic issue presented. Indeed, as stated in our petition, we considered the decision of the Court of Appeals in the *Joint Anti-Fascist* case to be erroneous and to require reversal by this Court. But these considerations were considered significant by the lower court, and have been urged by the government as obstacles to recovery by the Joint Anti-Fascist Committee. Any one of them may be regarded as significant by this Court or by one or two members of the Court. In the event of a divided Court, these considerations might well make the difference between reversal and affirmance of the court below. Since none of these considerations are present in the *Joint Anti-Fascist* case, counsel for the Joint Anti-Fascist Committee will not be in a position adequately to develop them before the Court. And an issue of this significance requires that it be fully explored by differing approaches if only to illuminate the nature of the question involved.

Because of the factual variances between the two cases, it is appropriate that the Court hear argument in both cases, particularly since the instant case more clearly reflects the impact of the respondents' actions on the exercise of rights guaranteed by the First Amendment. Since a decision in the *Joint Anti-Fascist* case will not, because of these differences, necessarily dispose of the petitioners' case, the efficient operation of the Court would justify hearing both cases at the same time so that the two cases may be examined together and not at separate intervals.

Moreover, it will be noted from a comparison between the petition for certiorari in the instant case and that in the *Joint Anti-Fascist* case, that the approach taken in the two cases are markedly different. The *Joint Anti-*

Fascist petition attacks the entire Loyalty Order and Section 9A of the Hatch Act. In contrast, petitioners in the instant case, attack only the actions of the respondents directed against the petitioners, and those portions of the Loyalty Order upon which their actions were based. Furthermore, the petition in the instant case, unlike the *Joint Anti-Fascist* petition, contends that the Attorney General, in listing the National Council as "subversive", failed even to comply with the provisions of Executive Order 9835, and the record in the instant case more adequately permits that challenge to be made.

And even to the extent that the issues raised by the two petitions for certiorari are identical, the legal approaches and analyses are markedly different. This is particularly true with respect to the key issue of whether the parties have standing to sue. Where different approaches and analyses are presented on an issue of this nature, this Court should have the benefit of them.

Finally, elemental justice requires that the petitioners in the instant case should be given the opportunity to have their own counsel present their arguments on their own behalf, and not be relegated to a mere waiting role.

Respectfully submitted,

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